ORIGINAL

No. 87 - 573

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1987

UNITED STATES OF AMERICA

Petitioner

v.

LARRY LEE TAYLOR

Respondent

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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Washington, D.C. 20530
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TABLE OF AUTHORITIES

Cases: page

QUESTIONS PRESENTED

Whether this court should disturb a trial court decision to dismiss a prosecution with prejudice after;

1.) Finding a clear violation of the Speedy Trial Act of 1974, 18 U.S.C. 3161 et seq. and;

2.) carefully considering the factors mandated in the Sanction section of the Act 31 USC 3162, and

3.) the trial court's decision was upheld on appeal.

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STATEMENT OF THE CASE

Respondent accepts the Statement of the Case on behalf of Petitioner. Except to add that Respondent plead guilty to the bail jump charge, and was sentenced to the maximum of five years.

REASONS FOR DENYING THE WRIT

This Court should deny the petition because the trial court considered all the factors mandated by the Speedy Trial Act and decided, based on her evaluation of the competing interests, that dismissal with prejudice was necessary to enforce the protections of the Act. The ruling was one particularly suited for decision by a trial court and is one that should not be disturbed absent a clear showing of abuse of discretion, unless this Court wants to micro-manage all the trial courts of this nation. There is no conflict with any other circuit as to the test to be applied or the factors to be considered. The government is unhappy with the result in this unique factual situation and seeks to use it to tie the hands of trial courts to deal with the competing interests that will always be present in these types of cases.

ARGUMENT

I. THERE IS NO PRESUMPTION FAVORING THE USE OF EITHER A DISMISSAL WITH PREJUDICE OR WITHOUT PREJUDICE AS THE REMEDY FOR A VIOLATION OF THE SPEEDY TRIAL ACT.

It seems clear, given the extensive discussions, both in the Legislative History and in the cases, concerning the appropriate sanction to be employed by the trial court after a determination of a violation of the Speedy Trial Act, and the clear language of the Act itself, that there is no presumption, one way or another, as to which sanction to apply.

It is disingenuous to argue that "the premise of the amendment to the sanction provision was that dismissals without prejudice would be an adequate sanction for most statutory speedy trial violations. (Petition for a Writ of Certiorari. pg. 11) and that prejudice to the defendant is an absolute prerequisite to a dismissal with prejudice. (See United States v. Russo 741 F2d 1264, 1267 (1984 11th Cir.); United States v. Caparella 716 F 2d 976, 979 - 980 (1983 2nd Cir.)

The plain fact of the matter is that after all was said and done, the discretion was placed, in clear language, in the hands of the trial court, and absent a clear showing of abuse, that discretion should not be disturbed. (United States v. Frey 735 F2n 350, 353 - 354 (1984 9th Cir); United States v. Salgado-Hernandez 790 F2nd 1265 1986 5th Cir.)

II. THE TRIAL COURT USED THE PROPER TEST, THE PROPER FACTORS, AND HER DETERMINATION OF THE RELATIVE IMPORTANCE OF THOSE FACTORS IN MAKING HER DECISION SHOULD NOT BE DISTURBED.

It cannot be argued that the trial court used an improper method to make her determination. Her opinion sets forth proper, statutorily mandated factors to be considered, and why, in her judgment, a strong message was needed to secure the active

participation of the government in protecting the Speedy Trial rights of defendants in her district. It appears she felt that only by sternly dealing with the United States Attorney's ongoing policy of not requiring the United States Marshall's Service to transport its prisoner's with the Speedy Trial Act in mind could the true values of the Act be implemented. Her decision comports with the provisions of the act and serves to enhance the proper administration of the Act within her district and it was this very proper motive that led to the dismissal with prejudice.

CONCLUSION

The factual situation here is peculiar. Respondent was indeed prejudiced by the delay both as to the time he spent in custody and the number of different facilities within which he was confined on his tortuous journey from San Francisco to Seattle. The trial court found the government's attitude lackadaisical. Their failure to secure Respondent's presence was, we believe, grossly negligent.

Whether any other person would have made the same decision is not the question. The question is, Does the Supreme Court want to be saddled with these discretion - type decisions just because the government does not like the result?

Where the Trial Court, vested with the knowledge of the circumstances both of this case and the United States Attorney's attitude toward the Act and its values, decides in her discretion, that a particular sanction is appropriate and in reaching that decision, clearly demonstrates that the proper method was used to reach that result, then this decision, after being affirmed by the appellate court, should not be disturbed. The Petition should be denied.

Respectfully submitted,

ANDRE LABOUDE
Attorney at Law

IAN G. LOVESETH
Attorney at Law

DATED: December 22, 1987

Of Counsel:

CHARLES FRIED
Solicitor General

PROOF OF SERVICE

I am a citizen of the United States and am employed in the City and County of San Francisco; my business address is 819 Eddy Street., San Francisco, California 94109. I am over the age of 18 years and not a party to the within above-entitled action.

On December 22,1987, I served the within MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS AND AFFIDAVIT IN SUPPORT THEREOF and BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI on the parties in said action by mailing a true copy thereof to:

Charles Fried
Solicitor General
Department of Justice
Washington, D.C. 20530

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 22nd day of December, 1987 at San Francisco, California.

Judith A. Moore

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